KSENIA OTREMSKY v. ALEXANDER OTREMSKY

[O.C.J. (Rajah J.) October 21, 1980]
[Singapore — Suit No. 3371 of 1978]

Trusts and Trustees — Equity — Resulting trusts — Effect of purchase in another's name — Presumption of advancement rebutted.

The plaintiff, administratrix of the deceased's estate, sued the defendant, their legally adopted son. She claimed that the property known as No. 73 Chua Chu Kang Road belonged to and formed part of the estate of the deceased, and that the defendant was not the beneficial owner of the said property which was in trust for himself and the plaintiff. The facts reveal that the deceased ran an animal business and lived at Clementi Road. In August 1949 the deceased and the plaintiff adopted a two-month child, the defendant in this suit. In 1968 the deceased and his family moved out of Clementi as the property was being acquired for development purposes. He was paid compensation and out of the compensation monies he purchased in October 1968, No. 73 Chua Chu Kang Road, the subject matter of the present action for $23,000 which he caused to be conveyed to and registered in the name of the defendant who was then still a minor-aged 20 years. The deceased and his family lived and carried on the kennel business at No. 73. The deceased paid for its maintenance, upkeep and all outgoings including property tax out of the monies arising from the kennel business. The defendant assisted the deceased in the business but in October 1971 he left the premises due to family differences. The defendant did not return to live there until his father's death on June 4, 1972. The plaintiff continued to stay at No. 73 and was responsible for the carrying on of the deceased's kennel business. In May 1973 the defendant got married and brought his wife to live with him at No. 73. The plaintiff and the defendant's wife could not get along with each other as a result of which the plaintiff left No. 73.

The defendant claimed that No. 73 was conveyed and registered in his name by the deceased out of his love and affection for the defendant, and in consideration of his compliance with the deceased's wish for him not to pursue his chosen career but to go into business with him, the deceased.

The defendant admitted writing a letter which acknowledged the plaintiff as owner of No. 73 and that the papers, all other legal and financial matters were the responsibility of the plaintiff. He claimed however that it was done under duress and/or without consideration.

Held: the circumstances of the case raised a presumption against advancement or gift to the defendant.

Cases referred to:-

(1) *Stock* v. *McAvoy* (1872) L.R. 15 Eq. 55.

(2) *Millard* v. *Lucas* (1936) 3 A.S.R. 166.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.

Joseph Ang for the defendant.

Cur. Adv. Vult.

Rajah J.: The plaintiff is the widow of Vladimir Nikolaewitch Otremsky (the deceased), who died on June 4, 1972, intestate, both a citizen of and domiciled in Singapore. She is suing as administratrix of the deceased's estate. The defendant is the legally adopted son of the deceased and the plaintiff.

The story begins sometime before the Second World War when the deceased, a Russian, came to Malaya with a Russian Circus. The plaintiff came to Singapore in 1937. According to her, the deceased had moved down to Singapore from Malaya and she met him in Singapore sometime during the Japanese Occupation of Singapore (1942-1945), and married him in 1949. At the time of their marriage the deceased was a riding instructor at a riding school. Sometime after his marriage he ceased being a riding instructor and started what was called an animal business which was that of buying wild animals from the surrounding countries and exporting them abroad. He was both carrying on this business at and living in a property at Clementi Road which consisted of a big house and four acres of land. Plaintiff did not have any children by her husband so they decided to adopt a two-month old child which they did sometime in August 1949 and this child is now the defendant in the suit.

In 1968 it became necessary for the deceased and his family to move out of Clementi Road as the property was being acquired for development purposes. He was paid compensation and out of the compensation monies he purchased in October 1968 No. 73 Chua Chu Kang Road, Singapore, the subject-matter of this action, for $23,000 which he caused to be conveyed to and registered in the name of the defendant who was then still a minor, aged 20 years. Upon completion of the purchase of No. 73, the deceased, the plaintiff and the defendant moved into it. The deceased not only lived at No. 73 with his family but also carried on his kennel business thereat. It is not disputed that it was the deceased who was the master of the house and of the business and that it was he who paid for its maintenance and upkeep and all outgoings including property tax out of the monies arising from the kennel business.

The defendant assisted his father in the business but sometime in or about October 1971 he left his parents due to family differences and did not return to No. 73 to live there until his father's death on June 4, 1972.

The plaintiff thereafter continued to stay at No. 73 and was responsible for the carrying on of the deceased's kennel and animal business. Sometime in December 1972 the defendant became engaged to his present wife. In May 1973 he married her and brought her to live with him at No. 73. Soon after the marriage it would appear that the wife and the plaintiff could not get along with each other. There seems to have been bickering and squabbles in the household, as a result of which the plaintiff finally left No. 73 and is now staying in factory premises belonging to a friend of hers.

It is in these circumstances that the plaintiff now claims a declaration that No. 73 belongs to and forms part of the estate of the deceased. She avers that it was the deceased's intention that the defendant should hold No. 73 not as beneficial owner but in trust for himself (the defendant) and the plaintiff and that he, the defendant, knew and understood that he so held No. 73. In substantiation of this the plaintiff also relies on defendant's letter dated March 23, 1973 acknowledging that No. 73 belongs to the plaintiff. The letter in the handwriting of the defendant and signed by him reads as follows: —

"To whom it may concern:

I, Alexander Otremsky of 73 Chua Chu Kang Road, Singapore 23, NRIC 0003648Z would like to make it known that the property of 73 Chua Chu Kang Road is not mine but that of Mdm. K. Otremsky of the same address. Please

make it known to whom ever it be, that the papers and all other legal and financial matters be the responsibility of no other than Mdm. K. Otremsky.

(Sgd.) A. OTREMSKY
23.3.73
0003648 Z."

To this the defendant says that No. 73 was conveyed and registered in his name by the deceased out of his love and affection for him (the defendant) and in consideration of his compliance with the deceased's wish for him not to pursue his chosen career but to go into business with him, the deceased. Although the defendant did give evidence on the "consideration" aspect of his plea it was not seriously pressed by defendant's counsel in his submission on behalf of his client. As to the said letter of March 23, 1973 the defendant admits the said letter but says that it is not binding on him as it was given under duress and/or without consideration. On the evidence before me I found none even remotely to suggest duress. As for the said letter being given without consideration I don't know what this is intended to do for the defendant, more so as defendant's counsel made no reference to it in his submissions before me.

The law in this case is clear and straightforward. It is clearly and succintly stated in Volume 38 of *Halsbury's* Laws of England (3rd Edn.). I can do no better than quote it here: —

"Where a person purchases property in the name of another or in the name of himself and another jointly, or gratuitously transfers property to another or himself and another jointly, then, unless there is some further indication of an intention at the time to benefit some other person or some presumption of such intention, the property is, as a rule, deemed in equity to be held on a resulting trust for the purchaser or transferor. Thus there is a resulting trust where the transfer is into the joint names of the transferor and an infant to whom the transferor does not stand in loco parentis." (Para. 1461).

But

"where a father or other person in loco parentis purchases property in the name of a child or transfers property into the name of a child, the transaction does not create a resulting trust for the purchaser or transferor, but is an advancement or gift to the child unless there is evidence of a contrary intention at the time of the transaction or the circumstances are such as to raise a presumption against the advancement or gift." (Para. 1463).

In this kind of case the evidence to be admissible has to consist of contemporaneous statements and acts and of subsequent statements of either of the concerned parties against the interest of the declarant.

There are two cases, one English and the other Australian, which are, in my view, pertinent to the issues in the instant case.

In the English case of *Stock* v. *McAvoy*[1]:

"A father purchased a copyhold cottage in the name of his son. Shortly after the purchase the father served notice to quit on an occupying tenant, but afterwards allowed her to remain at an increased rent, and during his life received the rents and paid the outgoings: Held: notwithstanding evidence of declaration that the cottage was the son's after his father's death, the purchase was not an advancement."

In the course of his judgment Sir John Wickens V.C. said, *inter alia,*

"It is said that the taking possession by the father at the time of the purchase is insufficient in general to rebut the presumption; but this does not, I conceive, apply where there is a formal and unmistakeable act of taking possession. Suppose a man bought a shop in his son's name, and immediately took possession and put his own name over the door, that would be an ostensible taking possession sufficient to shew ownership in the father and trusteeship in the son.

In this case the father called on the tenant, and gave notice to quit, but ultimately allowed her to remain. Perhaps I am not justified in treating that circumstance as a formal and unmistakeable act of taking possession by the father, sufficient to establish that he purchased for himself. But it is a circumstance of great weight, and looking at this and the rest of the evidence, I am of opinion that the Chief Clerk was right in finding that this was a trust and not an advancement. There must be a declaration that the son was a trustee for the father. The costs of the summons to be costs in the cause."

In the Australian case of *Millard* v. *Lucas*[2]:

"A father purchased land, the transfer of which was taken in the name of his daughter. The price paid was £700 of which the daughter contributed £226.10s the father provided the balance. The title, when issued, was held by the father. Rents and outgoings were shared equally by the father and daughter during the father's life. At the request of the father the daughter signed an acknowledgment that the father owned one equal half part of 'the house in her name' being the property purchased. The father died leaving his widow a life interest in his residuary estate and until her death she received one-half of the nett rents of the property. There were statements by the father contemporaneous with the gift showing that he might give his daughter the whole of the property, but he had never done so: Held: on these facts, any presumption of advancement rebutted." (Volume 25, English and Empire Digest (1962 Replacement Volume) Page 567 Note 72).

In the instant case the defendant's evidence pertinent to the issue before the court was as follows: —

"Eugene Phoa & Co., solicitors, acted for the purchaser. I went with my father to the lawyers. My father got a cash cheque for $22,732.66 (AB4). He wanted cash. So we went down to the Bank of China and cashed the cheque. The title deeds was taken. After cashing cheque we went home. I can't remember what month. He carried the cash and I the title deeds. We went home. He took the title deeds from me and put it together with the cash in a drawer of a table situated in the dining-cum-sitting room. That evening we had dinner and I retired to bed. It is the practice in our house not to close bedroom doors while sleeping. All the bed rooms are left wide open. In conformity with that practice my bedroom door was open when I retired. My parents were in the sitting room and they were discussing. In the course of their conversation I heard my father telling my mother that if anything were to happen to him the property was mine and the money in the drawer was to be my mother's."

I do not believe a word of the defendant's evidence as regards open bedroom doors at No. 73 and the alleged conversation between the deceased and the plaintiff. I believe no such conversation ever took place and that the defendant has made this up merely to bolster his case.

It is my view that the circumstances, detailed by me below, in which this transaction came about and the immediate use to which it was put by the deceased are such as to raise a presumption against advancement or gift to the defendant.

The circumstances: —

(1) Prior to the purchase of the property in October 1964 the deceased was carrying on a wild animal business, which was the sole means of his livelihood, at Clementi Road, on a four-acre piece of land which he had rented on a monthly basis.

(2) The deceased was also living on the premises

with his wife (the plaintiff) and the defendant, his lawfully adopted son.

(3) At the time of the transaction neither the deceased nor the plaintiff owned any immovable property.

(4) Due to development in the Clementi Road area the deceased had to leave the Clementi Road property and for so doing he was given compensation.

(5) Out of the compensation he bought in October 1964 No. 73 for $23,000 which he used both as his family residence and for the purpose of his animal and kennel business.

(6) The deceased kept the title deeds.

(7) All the outgoings on No. 73 was paid for by the deceased out of his animal and kennel business.

In the view I have taken of the facts of the instant case I hold that any presumption of advancement has been rebutted. There will accordingly be an order for a declaration that the house and land situate and known as No. 73 Chua Chu Kang Road, Singapore, belongs to and forms part of the estate of Vladimir Nikolaewitch Otremsky and for costs to the plaintiff.

Order accordingly.

Solicitors: *J.B. Jeyaretnam & Co.; Lee & Lee.*

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION v. CHEONG HOON CHONG

[O.C.J. (Rajah J.) October 28, 1980]

[Singapore — Civil Suit No. 2277 of 1977]

Bankruptcy — Charge — Charge stamped up $140,000 — Chargor only liable up to amount covered by the stamping.

The plaintiffs claimed against the defendant for the sum of $70,454.43 under clause 21 of a registered charge which was created by the defendant and one Lao, co-owners of the property charged. The charge was to secure partially up to M$140,000 credit facilities granted by the plaintiffs to the firm of Sharikat Alpha Associates of which the defendant and Lao were partners. Lao became a bankrupt on April 25, 1971 when the firm was owing the plaintiffs in the region of about M$159,000. At the date of the said bankruptcy the charge had only been stamped up to $140,000. The Official Assignee admitted liability only to the extent of M$140,000 and the plaintiffs on payment to them of the said amount discharged the charge. The present claim by the plaintiffs was for the balance of the unsecured monies owing by the bankrupt to the plaintiffs in respect of the credit facilities given to the firm by them.

Held, dismissing the plaintiffs' claim: the chargors were only liable up to the amount covered by the stamping and no more.

Case referred to:-

(1) *In re Waterhouse's Policy* [1937] 1 Ch. 415.

CIVIL SUIT.

David Wee for the plaintiffs.

K.C. Yeo for the defendant.

Rajah J.: The plaintiffs claim against the defendant, as pleaded in paragraph 7 of its amended statement of claim, is for the payment of the sum of $70,454.43 under Clause 21 of a registered charge dated November 21, 1969 over land in the District of Kuala Lumpur, West Malaysia, which charge was created by the defendant Cheong Hoon Chong and one Lao Kee Yam, co-owners of the property. The charge was to secure partially up to M$140,000 the following credit facilities granted by the plaintiffs to the firm of Sharikat Alpha Associates of which the said two co-owners were partners: —

"Line of Credit — M$200,000 —

Within Line:

(a) M$60,000 — for establishing irrevocable sight letters of credit with title documents covering the importation of your company's line of products.

(b) M$140,000 — for trust receipt up to 90 days to finance documentary import collections drawn on sight D/P terms as well as imports drawn under our letters of credit.
Interest rate presently at 9½ p.a.

AND/OR — for overdrafts in current account up to 30 days.
Interest rate presently at 9½ p.a.

AND/OR — for shipside bonds to 14 days.
Interest rate at 9½ p.a."

Interest rate at 9%.

The said Lao Kee Yam became a bankrupt on April 25, 1971 when the firm was owing the plaintiffs in the region of about M$159,000. It is not in dispute that at the date of the bankruptcy of the said Lao Kee Yam the charge had only been stamped up to M$140,000. In these circumstances the Official Assignee of the bankrupt admitted liability only to the extent of $140,000 and the plaintiffs on payment to them of the said amount discharged the charge. It is in evidence that the plaintiffs have filed a proof in the bankruptcy, presumably for the balance of the unsecured monies owing by the bankrupt to the plaintiffs in respect of the credit facilities given to the firm by them.

It is against this background that the defendant, who lives in Singapore, is now being sued here. On the claim as formulated by the plaintiffs the defendant, amongst the other defences raised, says, that as the Official Assignee has paid the secured sum of M$140,000 to the plaintiffs in full discharge of the sum secured under the charge, he is not indebted to the plaintiffs in the amount of $70,145.53 as alleged or at all. The defendant further says that plaintiffs' amended statement of claim discloses no cause of action against him and ought to be dismissed with costs.

As the plaintiffs' claim is based solely on Clause 21 of the charge it becomes necessary to look at Clause 21 carefully.

Clause 21 reads: —

"If on realisation of this security under the National Land Code the amount recovered on the sale of the land hereby charged is less than the amount due under this Charge the chargee notwithstanding that the chargee may be the purchaser thereof at such sale shall be entitled to recover from the chargor any difference between the amount due herein and the amount so realised and until such deficit is paid by the chargor shall be entitled to charge interest on such balance due at the rate aforesaid until the date of final payment."